

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
ET AL.,

Plaintiffs,

v.

TATE REEVES, in his official capacity
as Governor of the State of Mississippi;
ET AL.,

Defendants.

Case No. 3:23-cv-272-HTW-LGI

**PLAINTIFFS' REPLY IN SUPPORT
OF MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

The State Defendants' opposition brief (Dkt. 158) asserts that Plaintiffs' Motion for Leave to File First Amended Complaint should be denied. The only amendment Plaintiffs seek is voluntary dismissal of Counts I and II. Plaintiffs' motion seeks no amendment of Counts III and IV; those counts are unchanged and unaffected by the proposed amendment. Defendants' opposition to Plaintiffs' motion is peculiar, because they too seek dismissal of Counts I and II. Moreover, Defendants do not dispute that a motion pursuant to Fed. R. Civ. P. 15(a) is the proper mechanism for a plaintiff to dismiss less than all the claims in a complaint. Accordingly, there is no merit to Defendants' opposition to Plaintiffs' motion for leave to amend.

Nonetheless, Defendants argue that the motion for leave to amend should be denied, because they contend that Plaintiffs lack standing to assert Counts III and IV. Even if Defendants were correct that the Court should deny an amendment to Counts III and IV on the basis of standing, that would be no obstacle to voluntary dismissal of Counts I and II, which is all that Plaintiffs seek in the instant motion. But as demonstrated in Plaintiffs' Opposition to State

Defendants’ Motion to Dismiss for Lack of Subject-Matter Jurisdiction (Dkt. 156), Plaintiffs’ pending appeal of the Court’s orders denying Plaintiffs’ Motion for a Preliminary Injunction (Dkt. 135) and Renewed Motion for Injunction Pending Appeal (Dkt. 140 at 3)—denials that were based solely on lack of standing to assert Counts III and IV—divests this Court of jurisdiction to rule further on standing while the appeal is pending. *See, e.g., Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 233 (5th Cir. 2009) (district court is “divest[ed] . . . of its control over those aspects of the case involved in the appeal”). Defendants cite four cases at pp. 1-2 of their opposition where courts found that it would be futile to allow an amendment which failed to establish standing.¹ Those cases, however, do not support denial of a motion for leave to amend in this posture of this case. In none of those cases was an appeal pending, as it is here, on the very issue of standing. Those cases therefore are entirely inapposite.

Importantly, Plaintiffs’ proposed First Amended Complaint merely seeks to simplify the issues presented in this case. Defendants’ position, on the other hand, would only waste judicial resources and add unnecessary complexity to this already complex case. The Court should reject Defendants’ position and allow the voluntary dismissal of Counts I and II to proceed, without prejudice to consideration of a motion to dismiss the remaining Counts III and IV at an appropriate time when jurisdiction with respect to Plaintiffs’ standing returns from the Court of Appeals to this Court.

CONCLUSION

The Court should grant Plaintiffs’ motion for leave to file an amended complaint to voluntarily dismiss Counts I and II.

¹ *See Crenshaw-Logal v. City of Abilene*, 436 Fed. App’x 306, 310 (5th Cir. 2011); *Briggs v. Mississippi*, 331 F.3d 499, 508 (5th Cir. 2003); *Moore v. Bryant*, 853 F.3d 245, 248 (5th Cir. 2017); *Kasprzak v. Am. Gen. Life & Accident Ins. Co.*, 942 F. Supp. 303, 307 (E.D. Tex. 1996).

Respectfully submitted this 14th day of February, 2024.

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